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DEPARTMENT Attorney General - MPCA

STATE OF MINNESOTA

**Office Memorandum**

TO : Erica Dolgin Frank Hermann Bob Leininger ✓ DATE: 2/18/82  
Jim Pankanin Mike Kosakowski Mike Convery  
Rick Ferguson

FROM : Dennis M. Coyne *de* PHONE:  
Special Assistant  
Attorney General

SUBJECT: Reilly Tar Litigation  
Our File: 75.F017.0700

Enclosed to each of you is a copy of the Minutes of our  
Reilly Tar Meeting of Saturday, January 16, 1982.

I suggest that those of you with "assignments" report by  
March 1, 1982. We can either confer by conference telephone call,  
or advise by memo. I suggest that we advise by memo.

DMC/ps

Enc.

cc: Eldon Kaul  
Steve Shakman

Minutes of Reilly Tar Meeting

Saturday, January 16, 1982

PRIVILEGED

Attendees

U.S.:

Erica Dolgin  
Frank Hermann  
Bob Leininger  
Jim Pankanin  
Mike Kosakowski

USGS: (Marc Hult was present for his introductory comments and left before the agenda items were discussed)

Minnesota:

Mike Convery  
Rick Ferguson  
Steve Shakman  
Dennis Coyne  
Eldon Kaul

Introductory Comments by M. Hult

Marc Hult came to the meeting at 10:00 a.m. to discuss the work being done by the USGS and the need for further funding.

Marc explained that there were many constraints on the ability of the USGS to provide complete and timely reports; most importantly, the failure to obtain timely and accurate analytic results.

With regard to his opinion as to the most immediate steps to be taken to abate the pollution condition:

- (1) Treatment of the water withdrawn from the wells;
- (2) The abandonment of Well No. 23 and other important/major multi-aquifer wells (rather than doing a complete canvas of all multi-aquifer wells, including those in the northwest section of St. Louis Park);
- (3) Public information and awareness should be developed.

Marc stressed the need to finance the USGS so that there is an ongoing project which can be the basis to establish and fund additional activities. Marc reminded the audience that many of

the issues being addressed by the USGS, issues which the Court will address, are "science" court issues. As an example, Marc pointed out that PAH's should not be found in municipal wells, based on an analysis of the PAH's from a chemical standpoint (the PAH's being so insoluble and heavily absorbed). The presence of PAH's in municipal wells can be explained, however, on a theory of biological degradation, a theory which the USGS is studying.

After Marc left the meeting, the discussion again focused on the agenda for our meeting.

### Laboratories

#### 1. Analytic Methods (EPA method)

Mike Convery will consult with MDH labs to establish whether the lab uses the EPA method and, if not, will seek certification by EPA.

Mike Convery to advise.

#### 2. Quality Control

Jim Pankanin has agreed to inquire as to the quality control methods necessary to assure comparable results from reporting labs. Each lab will be requested to provide an affidavit as to their analytic methods and quality control procedures. Erica Dolgin mentioned that EPA has retained an expert in the Solvents Recovery to address the quality control issues in that case. Erica will determine whether such an expert is needed in the Reilly litigation.

Jim Pankanin and Erica Dolgin to advise.

### Epidemiological Investigation

A consensus developed at the meeting that an epidemiologist should be consulted, but that additional epidemiological investigations should be determined on their own merit, not for litigation needs. Mike Kosakowski will continue to play the lead role in finding an epidemiologist. He will get the names of epidemiologists, and provide certain of these with the epidemiological reports and water quality data for their review. Steve Shakman will seek names of local epidemiologists from Dr. Dean at MDH. Frank Hermann suggested that Mike contact Bob Small, Assistant U.S. Attorney, for possible references to epidemiologists in this area.

Mike Kosakowski and Steve Shakman to advise.

## Standards for Water Quality

### 1. Potable Water Criteria

Minnesota attendees discussed the New Brighton situation where some of the EPA personnel were not supportive of the  $10^{-5}$  criteria for drinking water in New Brighton. Mike Kosakowski will discuss the potable water criteria with Lucy Siebold of the Superfund office. There was some discussion that the establishment of water quality criteria would have to take into consideration other derivatives of coal tar (including more than just PAH's), as well as other constituents in the water. (Marc had identified polycyclic hydrocarbons as a potential public health concern.)

Mike Kosakowski will advise.

### 2. NPDES - receiving water quality criteria

The PCA is taking samples from the Mississippi River and of water through the Metro plant. The MPCA will play the lead role in establishing the water quality criteria, although the criteria will have to be developed and approved in consultation with EPA.

Rick Ferguson continues to have the lead role on this item.

## Experts

### 1. Geologists,

There is a consensus that we need a "crusty" geologist with PhD credentials.

Erica Dolgin will determine if Geraghty and Miller can be the consultants for the U.S.

### 2. Process Expert/Industrial Chemist

Warren Thompson has been retained as an expert in wood treating. He is a process expert, an engineer by training. He is not a chemist or an expert on the refining of coal tar. We may need an industrial chemist to address coal tar composition. We may need this input for first depositions of Reilly plant operators.

Subsequent to the meeting, Steve Reed advised Dennis Coyne that Warren Thompson seemed well qualified to be an expert in wood treating processes.

Mike Kosakowski continues to be the person responsible for the process expert. He will inquire further as to whether there is a coal tar refining expert.

3. Soil Scientist

Kirk Brown has done an initial recommendation with regard to assessing the health risks of contaminated soils. Marc Hult has reviewed the proposed sampling program and made recommendations to Kirk. The objective is to determine the levels in soils and appropriate and effective remedial activities.

Mike Kosakowski will continue to coordinate the soil issues.

4. Epidemiologist

See the preceding discussion of epidemiological investigations.

5. Toxicologist

There is a consensus that the toxicologist will have to look at the derivatives of coal tar and not limit his inquiry to PAH's.

Mike Kosakowski will continue to play the lead role in retaining a toxicologist. He will contact Herman Gibb at the Carcinogen Assessment Group and submit a list of names, particularly focusing on individuals who have participated in the writing of criterion documents. Mike will confer with Steve Shakman on the toxicologist.

6. Water Treatment Expert

A water treatment expert will not be retained at this time. However, approximately \$200,000 of Superfund money will be directed to a study of water treatment alternatives.

(Mike Kosakowski distributed a draft reply to the ERT letter which questioned the effect of conventional water treatment on the removal of PAH's. He solicited comments from Minnesota representatives.)

7. Litigation Support - Ed Kleppinger

The representatives of EPA indicated that there were no funds available to retain an expert like Ed Kleppinger.

Litigation - Reply to Judge Magnuson letter of 12/31/81

Frank Hermann offered to draft a reply to the Court indicating the schedule for the litigation. Consensus was reached that Minnesota and the U.S. would confer on their letters.

Discovery

Consider requests for admissions, interrogatories on financial data, depositions in early Spring.

Positions on Key Issues

There was some discussion of the need to develop a consensus, if possible, between the U.S., Minnesota and St. Louis Park governments with regard to remedial steps to be taken and further water quality standards to be established. After some discussion, there was no consensus on how to proceed to develop such a consensus, however, the offensive taken by St. Louis Park to undertake remedial activities and their criticism of the water quality standards proposed by MDH for the potable water will serve as a catalyst to develop Agency positions on these key issues.

DMC/ps



Saturday 1/16/82  
Patty Tar Strategy Review

Marv Kutt: EPA/USGS strategy agreement will allow him to review the whole report (which has now done) and the soils report after it is done next spring/summer. Any field work done by Kutt would have to be paid for out of Superfund. Kutt Brown put together a proposal for soil sampling which was critiqued by Kutt and Brown is incorporating those changes.

Marv Kutt:

He is explaining the role of USGS, expects us that USGS is the agency to keep take on groundwater. He will take longer to get to the whole truth on the problem, even if it takes longer.

HPLC is the best method available to

analyze for low levels of contaminants,

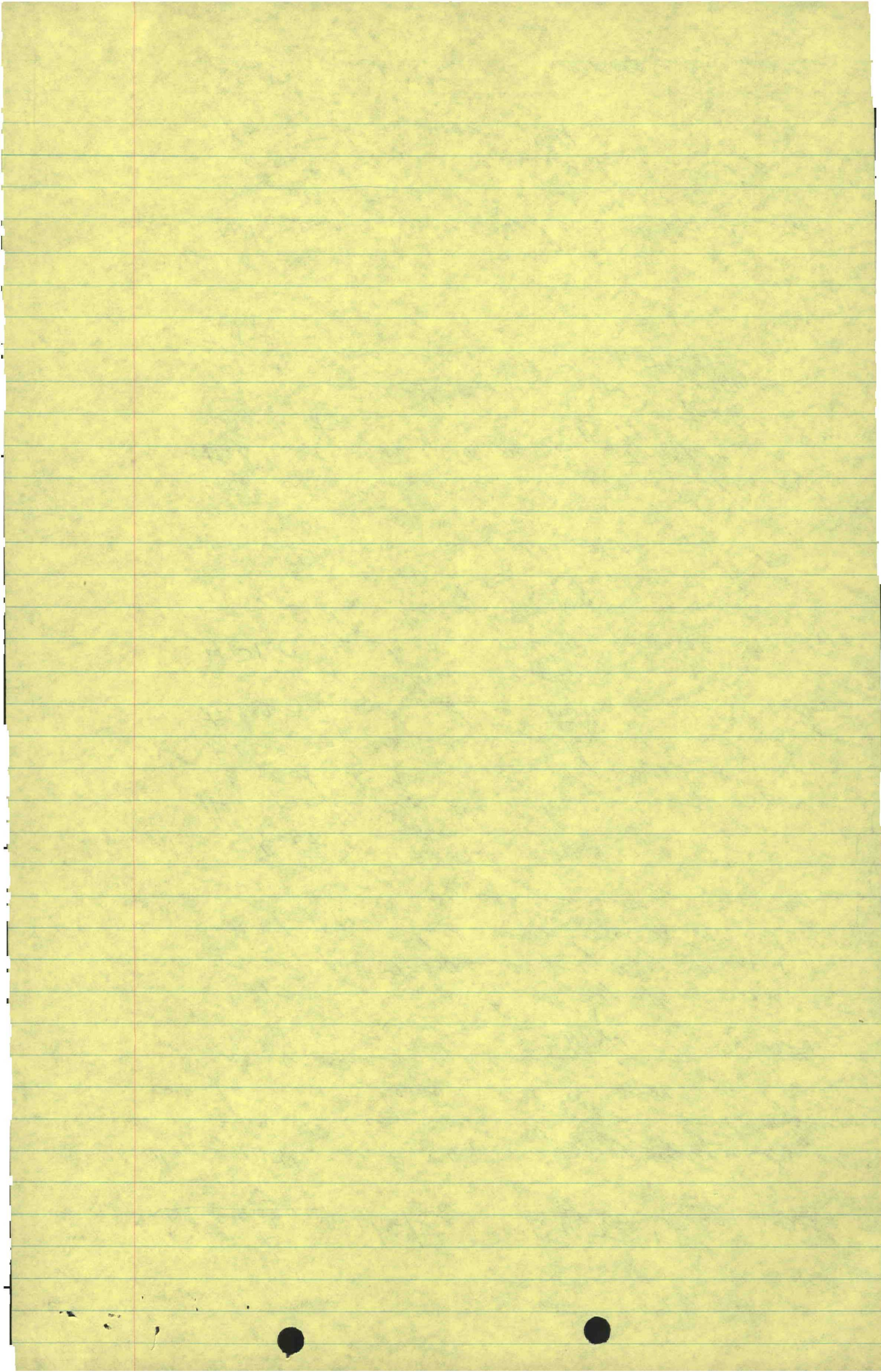
and for most of the data, he thinks it's probably OK, but it's still a problem.

Well 23 cannot be cleaned out w/a cable tool. It was tried since 1978 but was found to be ineffective. Kutt suggests that his method will be better because you'll know what's at the bottom of the well

Nitrogenous by lithography are found at concentration, we need to find out the concentration. Marv Kutt will

USGS needs \$50,000 to keep going





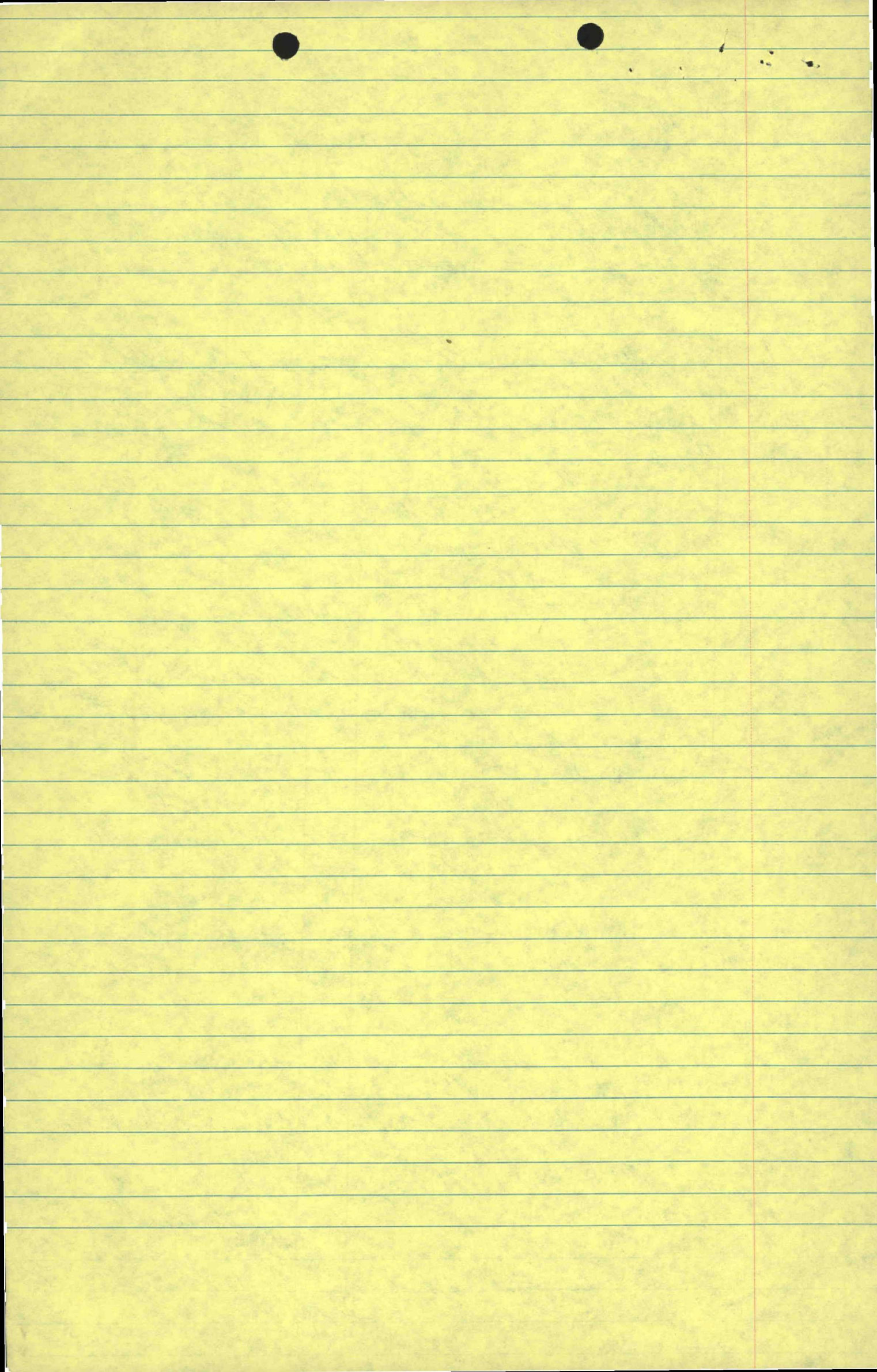


## Reilly Tar

The key issues which have to be addressed in order to proceed w/ a trial ~~major~~ negotiations w/ the Company are:

1. The nature and extent of the problem in the St. Louis Park vicinity. This requires us to determine the following things:
  - a. the chemicals which can be found in the soil and the water
  - b. the source of these chemicals w/ regard to the types of products or operations that can give rise to them and whether and if they can or are occurring naturally due to such sources as pet, that is:
    1. what is the background level of these chemicals, and
    2. what other operations besides Reilly Tar could give rise to these chemicals.
  - c. the levels and types of chemicals that are found in the vicinity in:
    1. the soils
    2. the aquifers
    3. the drinking water wells, and
    4. the sampling wellsThis information will provide evidence relating to:
    1. Reilly's culpability as the source
    2. the extent of contamination
    3. the extent of clean up needed
  - d. the toxicity levels of the contaminants in drinking water







1. HPLC is low accurate or inaccurate?  
Can we say  $\pm$  error or % error?  
Can we be surely accurate <sup>to</sup> ~~within~~ the order of magnitude?  
What are the ramifications of the error in HPLC?  
Is it because of the  $2.8 \text{ ng/l} + 28 \text{ ng/l}$  standard?

2. Hult spends 60 hrs/week on Reilly Tan  
→ X

→ A HPLC works well for saying a compound is not there but is only accurate if all three detectors show that the chemical is there.

3. Will Hult give his results to Parkin/Koz regarding Nitrogenous tetracyclics.



Mike Kozakowski

Howard Hille, Toxicology + epidemiology / DHH  
on HQ cancer group panel  
We need an epidemiologist to look at the  
data, including the Dean study and the  
August sampling, the map, the recent  
data, the Dean report (for background)

Reilly Tar Chemical Meeting Agenda

Saturday, January 16, 1982

Laboratories

1. Analytic Methods (EPA method)
2. Quality Control

*Convery will check*

Epidemiological Investigation

Standards for Water Quality

1. Potable Water Criteria
2. NPDES - receiving water quality criteria

Experts

1. Geologists, including Marc Hult, Rick Ferguson, Mike Convery *Decheraty, Miller, Don Albino,*
2. Process Chemist *Steve Reed, Warren Thompson (wood science)*
3. Soil Scientist *Kirk Brown*
4. Epidemiologist
5. Toxicologist
6. Water Treatment Expert

7. Litigation Support - Ed Kleppinger

8. *Analytical expert - one guy to visit + review all involved labs.*

Litigation - Reply to Judge Magnuson letter of 12/31/81

1. Motions - Bifurcation
2. Depositions
3. Further Interrogatories, Admissions
4. Document production by U.S. - document control (number stamping)
5. Time of trial

Superfund

1. Initial \$400,000
2. Subsequent applications/funding



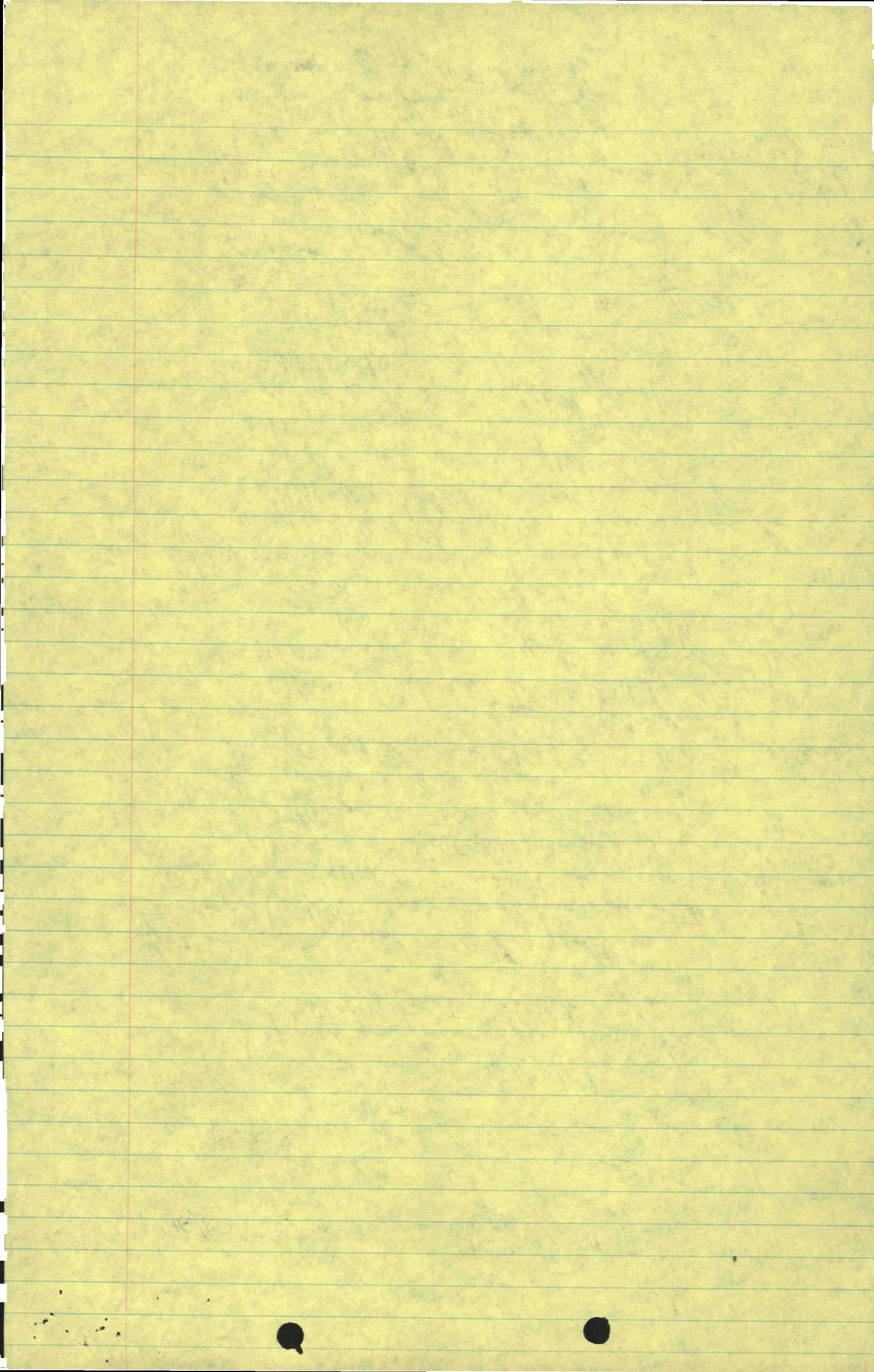
1/16/82 Kelly Strategy meeting  
oil sampling scheme - occupancy area  
Hall and Kirk Brown

Purpose - determine the extent of sampling  
Brown has prepared plan for oil sampling  
Hall has written comments on plan.

Plot - paved off and EPA has problems.  
- past studies have resulted in clear oil (reports  
1978 - dated SLP report (with aquifer well location)  
11/79 finished field-sampling report. Completion  
delayed due to late chemical analysis.  
Printed 1981.  
Current MDPH study could be interpreted that ~~oil~~  
contamination is not from rock hard derivatives.  
This is probably due to analytical difficulties (HPLC)  
⇒ Conclusion: On time reports can be generated by  
USGS, but they may not say what EPA, MDPH  
and MDPH want to hear.  
Use of USGS work for Superfund remedial planning  
- well abandonment program - USGS has a long list of  
wells that should be addressed near site.  
- Superfund wants an entire plan first.  
- Well 23. Flowing 150 gpm. determined 1978. Leaking and  
pader were paid for and installed by USGS.  
- 1958 attempt to clean with cable tooling was  
unsuccessful. Why repeat?  
- Well 23 contains water w/ 9000 ngl BOP

- Public awareness. Large sum for awareness compared to  
importance of USGS work.  
- HPLC analysis. Not good to distinguish between compounds.  
GC/MS is better for identifying not quantification.  
Quality of data should be considered in generating any  
conclusions e.g. Hydrok study







1/16/82

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Health (cont)

Research needs of USGS actually help understanding of problem for EPA. example is new finding of nitrogenous heterocyclic compounds (more mobile and more toxic than PAH compounds)

Herman Gibb - USEPA Health Assessment is knowledgeable about nitrogenous compounds.

Another research accomplishment of USGS that helps explain Reilly problem is ongoing work on aerobic degradation of PAH in Prairie du Chien.

- USGS can now formally review consultant reports.
- \* USGS need \$2 K for FY82 (at least) ASAP

Epidemiology

no study can prove that Reilly wastes have caused cancer.

get a toxicological expert on line via a-via PAH health effects. Herman Gibb is HQ CAG representative.

→ let's get a Reilly PAH toxicological aspect packet.

(maybe also include nitrogenous ~~heterocyclic~~ compounds when the data becomes available).

- New Brighton case - EPA is pushing  $10^{-4}$  risk assessment at levels.

- does this impact Reilly? <sup>TCE data unsubstantiated</sup>

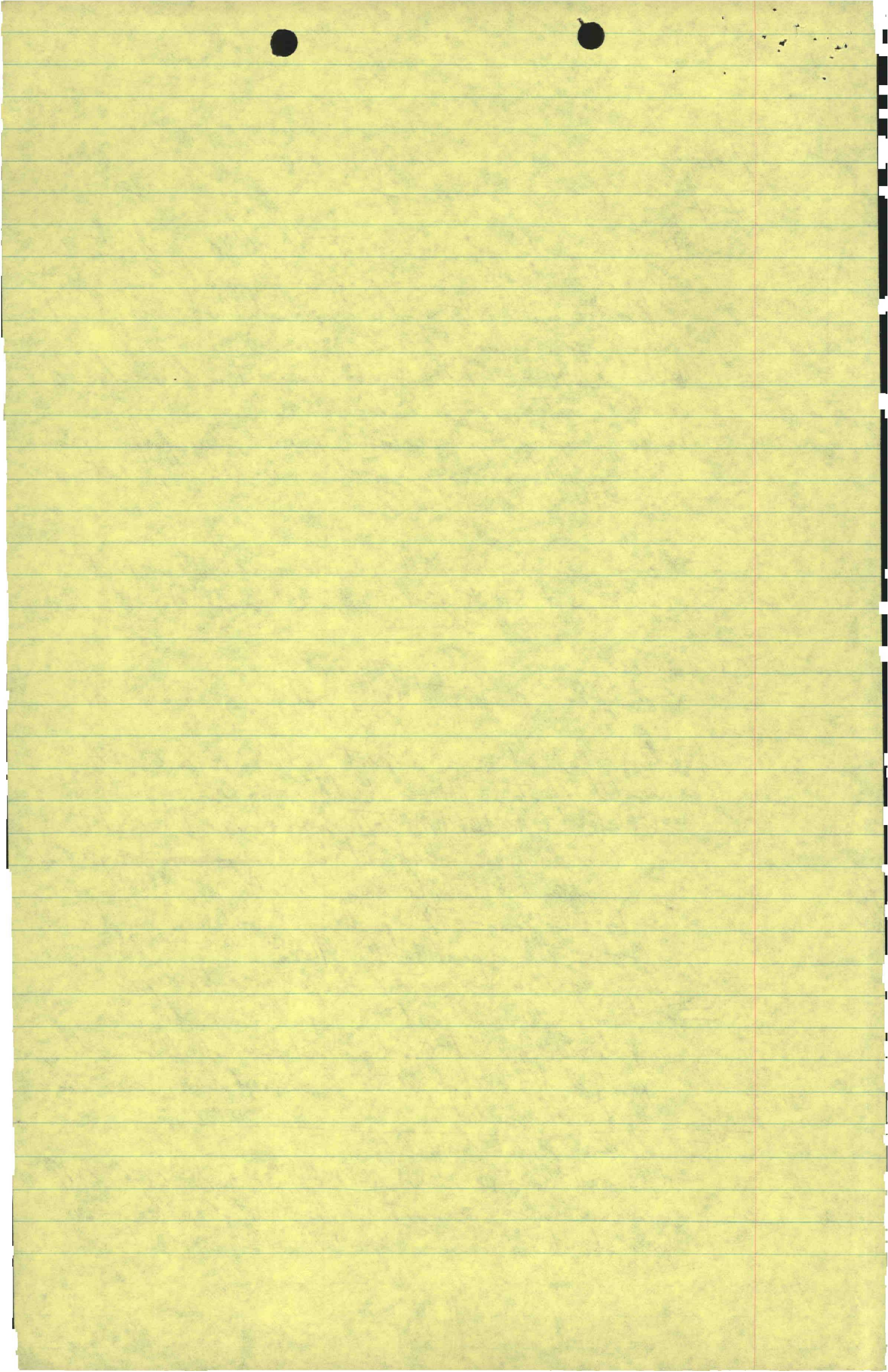
- Andy Dean/MDH generated past report on epidemiology.

⇒ Kosakowski will get 3 possible experts in epidemiology and toxicology and provide them with past studies and new data. Enforcement team can then meet with candidates.

Standards for Water Quality

Surface water limit per MPCA will be 311 ng/l total PAH  
Government agencies must get there act together on standards. Decisions must be made, not put off.







1/16/82  
Expts

Page 3

Norman Thompson - expert on wood preserving + distillation processes  
Still need a chemical consultants expert.

Jeff Brown - his expertise may not be what we want.

Water Treatment Expert - use Michals study under  
superfund project; Kosciowski will figure out  
necessary sampling for sand filtration and aeration.

Soil sampling - talk to Brown + Holt and Norm  
Nederhiser re GCA contract for necessary  
sampling

✱ review Kosciowski draft for Brown to CRT







9:30 meeting Saturday  
720 American Center Bldg  
150 East Kellogg Blvd  
St. Paul

epidemiology concerns

725-7841  
~~call Max Hult re: new type of contaminant~~

PAH criteria health levels  
surface water levels

What is EPA position? Is this legally defensible?  
Is this technically feasible?  
Has it been determined?

How does epidemiology study (proposed) relate  
to acceptable drinking + discharge levels?  
EPA needs to define its 1982 position ASAP.  
Not at staff level.



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